

FIRST ENGROSSMENT
with House Amendments

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2404

Introduced by

Senators Miller, O'Connell, Wardner

Representatives S. Meyer, Rust, Weiler

1 A BILL for an Act to provide a lien for oil and gas owners to secure payment for the sale of oil
2 and gas.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "First purchaser" means the first person who purchases oil or gas from an interest
6 owner at or after the time the oil or gas is severed.
- 7 2. "Interest owner" means a person owning an entire or fractional interest of any kind
8 or nature in the oil or gas at the time it is severed, or a person who has a right,
9 either express or implied, to receive a monetary payment determined by the value
10 of the oil or gas severed.
- 11 3. "Operator" means a person engaged in the severance of oil or gas.
- 12 4. "Purchaser" means a person who purchases oil or gas from a first purchaser.
- 13 5. "Severed" means the taking, extraction, or production from the land of oil or gas in
14 any manner.

15 **SECTION 2. Extent of lien - Dispute as to amount due - Notice - Buyer in ordinary**
16 **course of business.**

- 17 1. To secure payment from the sale of oil or gas, an interest owner, subject to
18 section 4 of this Act, has a continuing security interest in and a lien on the oil or
19 gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of
20 the interest owner's interest until the purchase price has been paid to the interest
21 owner.
- 22 2. In the event of a bona fide dispute as to the amount due the interest owner, the
23 security interest and the lien do not accrue if the person holding the proceeds upon

1 which a lien is claimed tenders to the interest owner the amount which that person
2 in good faith believes to be due and payable.

3 3. A security interest or lien claimed pursuant to this Act is not effective against an
4 interest owner, operator, first purchaser, or purchaser until a copy of the notice of
5 lien required to be filed under section 4 of this Act has been delivered to the
6 interest owner, operator, first purchaser, or purchaser by registered mail.

7 4. Notwithstanding any other provision in this Act to the contrary, a person who pays
8 the purchase price for oil or gas severed from a well to the interest owner with
9 whom that person has a contract regarding purchases from the well or to one who
10 is authorized to receive payment on behalf of or for the interest owner is deemed a
11 buyer in the ordinary course of business and takes the oil or gas free of the
12 security interest and lien granted to the interest owner by this Act, and the first
13 purchaser or purchaser who makes the payment and all its property is free from
14 and not subject to the security interest or lien granted to the interest owner by this
15 Act.

16 **SECTION 3. Validity of lien.** The validity of the security interest and lien granted to an
17 interest owner under this Act is not dependent upon possession of the oil or gas by an interest
18 owner or operator and a security interest or lien does not become or may not be deemed to be
19 void or expired by reason of a change or transfer of the actual or constructive possession or
20 title of the oil or gas from the interest owner or an operator to a first purchaser or purchaser.

21 **SECTION 4. Perfection of lien - Verified notice - Effect of instruments - Effective**
22 **date of lien.**

23 1. If the proceeds for oil or gas which are required to be paid are not paid to the
24 interest owner when due, the interest owner may perfect the security interest and
25 lien by filing a form UCC-1A in the central indexing system and recording the lien
26 in the real estate records in the office of the county recorder of the county in which
27 the well is located. If the oil and gas owner's lien is not filed within ninety days
28 from the date of production, the security interest is not perfected and does not give
29 the interest owner priority over a perfected security interest in the same oil, gas, or
30 proceeds of the oil or gas.

- 1 2. All instruments that are presented to a county recorder for filing in accordance with
2 subsection 1 are effective as financing statements even though the signature of
3 the debtor may not appear on the lien. Liens must be filed in the central indexing
4 system and recorded in the real estate records of the county. Liens may be
5 terminated in the same manner as financing statements.
- 6 3. Upon perfection by filing, the security interest and lien of the interest owner takes
7 priority over the rights of all persons whose rights or claims arise or attach
8 thereafter to the oil or gas unpaid for, or the proceeds of oil or gas if the oil or gas
9 has been sold, including those that arise or attach between the time the security
10 interest and lien attaches and the time of filing. The security interest and lien
11 created pursuant to this Act do not have priority over the security interest and lien
12 rights previously created and perfected or an operating agreement or other
13 voluntary agreement for the development and operation of the property.

14 **SECTION 5. Rights of first purchasers.** Neither this Act nor the filing of a lien
15 permitted under this Act affects the time at which legal title to the oil and gas may pass from an
16 interest owner or operator to a first purchaser or the ownership of the oil and gas before
17 severed as reflected by the records affecting real property or the right of a first purchaser to
18 take or receive oil and gas under the terms of a division order or similar agreement for the sale
19 and purchase of oil or gas. Notwithstanding this Act, a first purchaser or purchaser is free to
20 transport products out of the state and to sell the products without permission or release of lien.

21 **SECTION 6. Expiration of lien - Enforcement - Joinder and consolidation - Costs -**
22 **Personal actions - Other rights and remedies.**

- 23 1. The security interest and lien granted to an interest owner follow the oil and gas
24 unpaid for or the proceeds of the oil or gas if the oil or gas has been sold. The
25 security interest and lien expire one year after the date of the filing of the notice of
26 lien unless proper action to enforce the lien is commenced within such time in the
27 district court of the county in which the well is located, or wherever the oil or gas
28 unpaid for or the proceeds of oil or gas sold may be found. Persons claiming
29 security interests and liens with respect to the oil or gas from the same well may
30 join in the same action, and where separate actions are commenced the court may
31 consolidate them. The court may allow as part of the costs of the action moneys

1 paid for filing and recording instruments and reasonable attorney's fees for the
2 prevailing party. If an action is commenced after the filing of a lien, the lien is
3 considered a lien upon the oil or gas severed, or the proceeds of sale if the oil or
4 gas has been sold, to the extent of the interest of the claimant, for payment of the
5 amount due the claimant and the security interest and lien of the claimant may be
6 enforced in the manner provided by law.

7 2. This Act does not impair or affect the right of a person to whom a debt may be due
8 to maintain a personal action to recover the debt against the person liable for
9 payment of the debt.

10 3. This Act does not impair or affect the rights, priorities, or remedies of a person
11 under the Uniform Commercial Code and this Act is cumulative to and not a
12 limitation on or a substitution for any rights or remedies otherwise provided by law
13 to a creditor against the creditor's debtor.